

UGANDA / JUDGMENT

Uganda v Edemacu (Criminal Session Case 56 of 2023) [2023] UGHC 313 (20 July 2023)

[2023] UGHC 313

COURT

High Court of Uganda

BEFORE

Acellam, J

CASE / FILE NUMBER

Criminal Session Case 56 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KOBOKO****HIGH COURT CRIMINAL CASE NO. 0056 OF 2023 (Arising from Maracha CRB 0284 of 2021)****UGANDA::: :::::PROSECUTOR****VERSUS****EDEMACU LONZINO ACCUSED****BEFORE HON. MR JUSTICE ACELLAM COLLINS****JUDGMENT****Introduction.**

The accused in this case is indicted for the offence of Rape contrary to section 123 and 124 of the Penal Code Act. The particulars of the offence are that the accused, Edemacu Lonzino, and others still at large in the night of 4th October 2021 at Maduie Trading Center in Maracha District had unlawful sexual intercourse with Jenifer Nakato without her consent.

It is alleged that on the 4th of October 2021, the victim went to a disco at Maduie Trading Center in the company of her brother Isingoma John. At about 9:00pm her brother saw her seated with

the accused and two other friends and informed her that he wanted to go home. She told him that she would come later. At about 0001hrs the victim informed the accused and his friends that she was tired, and she was going to look for her brother. As she got up, the accused and his friends got hold of her, closed her mouth, and dragged her to a nearby bush from where they removed her clothes and the accused forcefully had sexual intercourse with her after which she fainted. She only regained consciousness in the morning and was discovered by one Ojaku who gave her his jacket to cover herself and took her home with a torn blouse. Her father then reported the matter to the police.

The accused's defence.

In his defence the accused denied the allegation and testified on his own behalf a? DW1. He stated that the victim is known to her, and they have been in a relationship from October 2019, and he used to meet with her at Madule Trading center where he was attending the shop of his brother. He also admitted seeing the victim that day and they had a drink together in the company of four of his friends. She later left them and went to the disco while he proceeded home arriving at about 4:00am and slept until morning. In the evening the victim and her brothers came to their home looking for his father and told him that the victim had been raped. He told them ⁿ that he last saw the victim at 2:00am when they separated with her.

The burden and standard of proof.

The prosecution has the burden of proving the case against the accused beyond reasonable doubt. This burden does not shift to the accused person, and he can only be convicted on the strength of the prosecution case and not on the weaknesses of his defense.(See: **Ssekitoleko v. Uganda**[1967] EA 531).

By pleading not guilty the accused put in issue each and every essential ingredient of the offence and the prosecution has the onus of proving each and every one of them beyond reasonable doubt. Proof beyond reasonable doubt does not necessarily mean proof beyond a shadow of doubt. The standard is achieved if all the evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (See: **Miller v. Minister of Pensions** [1947]2 AL ER 372)

Ingredients of the offence.

Section 123 of the Penal Code Act defines the offence of Rape. It provides that any person who has unlawful carnal knowledge of a woman or girl, without her consent has committed rape. A person who has carnal knowledge with her consent, if the consent is obtained by force, means of threats, intimidation of any kind, or by fear of bodily harm also commits rape. Rape also includes false representations as to the nature of the act, or in the case of a married woman, by personating her husband.

For the accused to be convicted of rape, the prosecution must prove each of the following essential ingredients beyond reasonable doubt.

- 1. *Unlawful carnal knowledge of the victim.*
- *2. The carnal knowledge was without her consent.*
- *3. That it was the accused who had carnal knowledge of the victim.*

a) Unlawful carnal knowledge of the victim.

Carnal knowledge means penetration of the vagina, however slight, of the victim by a sexual organ, where a sexual organ means a penis. Penetration is normally proved by evidence of the victim, medical evidence, or any other cogent evidence.

In this case the victim testified that she had known the accused having met him once at Madule Trading Centre. The second time she met him was in October 2021 at 7:00pm at a church confirmation party at that trading center in the company of an unnamed friend of hers. That the three of them stayed there up to 11:00pm taking soda which the accused had bought for them. She left to go home, and the accused volunteered to escort her and started forcing her wanting to rape her. As they walked he started touching her body whereupon she told him that she did not want. When he noticed that she was serious he started using force and tearing her clothes. As they struggled he tore her trousers, overpowered her, and raped her. She became weak and slept in the bush by the roadside and she was discovered in the morning by people who were passing by while naked. They gave her some cloth

to cover herself and took her home. After the incident she was weak and was feeling pain in her private parts and stomach. It took about a month because she was not treated. She was later taken to the Arua Hospital where she was treated for wounds on her private parts, back and knees. She also testified that the first time they met the accused had proposed to be her lover, she had agreed to that, but they had not talked about sex.

PW2, Iluza Drateru, the stepmother of the victim, testified that on that day she left home with the victim who was going to pass time with her friends. She returned home at 5:00pm but the victim was only brought to her the next morning by some people who found her by the roadside when she was naked. She asked and she told her that she was raped by a certain boy and her clothes were torn. That although she did not check her properly because she was hurt as she had bruises in her private parts.

The victim was examined at Maracha health Centre IV on 6/10/21 by Dr. Arije Francis who found she had tenderness on the neck and head which were mildly swollen. He also found tenderness of the abdomen and back, bruises on the left elbow joint and knee joint. On the genitals there were scratch wounds (ulcers) at the right thigh, bruises on the labia minora and majora and bruises on the buttocks. He attributed all these injuries to very aggressive sexual intercourse. By consent of the parties the medical examination report was admitted as an agreed fact and marked as PEX1.

The above evidence clearly show that there was a sexual act performed on the victim and the prosecution has proved beyond reasonable doubt this ingredient of the offence.

b) Lack of consent of the victim.

Lack of consent is normally established by evidence of the victim, medical evidence, and any other cogent evidence. The victim, PW1 testified that whereas she had known the accused and he had proposed to be her lover they had not talked about sexual intercourse. On the day of the incident he volunteered to escort her back home from the party. On the way he started forcing her and she told him that she was not interested. When he realized that she was serious he started using force and tore her clothes. As they struggled he tore her trouser and had sexual intercourse with her in a bush by the roadside and left her there. She became weak and slept there till morning when she was discovered by passersby who gave her a cloth to cover herself and took her home. She felt pain in her private parts and her stomach and when the matter was reported to the police she was referred to Nyadri hospital where she was examined. She felt pain for about a month, and she was treated at Arua Hospital for the wounds on her private parts, back and knees.

PW2 also told court that when the victim was brought home she asked her what happened, and she reported that a certain boy had raped her. The evidence of the victim shows that the sexual intercourse performed on her was without her consent. Her

evidence is corroborated by the medical examination report in which the medical officer indicated that the injuries she sustained was as a result of very violent sexual intercourse.

The evidence of the victim and the nature of the injuries she sustained could have only been as a result of forceful sexual intercourse without her consent. I find the prosecution has proved this ingredient beyond reasonable doubt.

c) That it is the accused who had carnal knowledge of the victim.

The last ingredient the prosecution has to prove is that it is the accused who has carnal knowledge of the victim. This ingredient can be proved by adducing evidence, direct or circumstantial, showing the accused as the perpetrator or a participant in the perpetration of the offence. The accused on his part denied the offence insisting that he last saw the victim as she entered the disco while he headed home.

According to the victim on the fateful day she met the accused person after the party, and they stayed together up to 11:00pm when she decided to go back home, He then volunteered to escort her and raped her in a bush by the roadside a distance of about 50 meters from the place where there was a disco. He left her there where she slept until she was discovered the next morning.

The accused on his part testified that he was at the party up to about 6:00pm when he left to go home and bathe. He left home between 6:00pm-8:00pm and upon returning he went and sat in a bar on the Congo side of the border. At about 9:00pm the victim joined them, and they started

drinking together. At around 2:00am his brother Sonia who was attending the shop told them he wanted to close the shop and they all decided to go to the disco but there was chaos at the gate. They decided to go home and arrived at 4:00am and slept. It was only the next day at 5:00pm that the victim came to his home with her brothers. They asked whether he was at the disco, whether he met the victim and what time he returned and he told them that he had met her and he bought for her alcohol, and they were together up to 2:00am when she entered the disco. They then told him that the victim had been raped and she was discovered behind the disco, and they had come she had told them that they were together. They then told him to give them 3 goats and one chicken and he told them he did not have anything. Later police from Odidribiku police post came and arrested him.

The victim in this case knew the accused and spent the evening with him. This fact is not disputed by the accused. The only part of the evidence the accused disputes is that he left the trading centre in the company of the victim. Having been in the company of the accused for most of that evening ^I believe the victim would not have had any reason to lie against him that he was the person who raped her.

The victim s evidence is that it was the accused person who had earlier approached her proposing to have a relationship with her, a proposal she accepted, however they had not discussed anything about having sex. When he was escorting her home he started touching her body and when he noticed she was not interested he started using force and tearing her clothes. These circumstances suggest it is only the accused who could have committed the offence. The victim would have had not motivation to lie against except for reason that he committed the offence. The two had spent the evening together and the victim had ample time to observe the accused and the only inference that can be drawn from the above is that the accused found himself with the victim because she knew him and for that reason trusted him to escort her home. He was the only person who was known to her and was with her that evening.

For the above reasons I find that the accused is the person who raped the victim. The prosecution has adduced sufficient evidence to prove *beyond* reasonable doubt that the accused committed the offence. In agreement with the opinion of the assessors I find the accused guilty of the *offence of Rape contrary to section* 123 and 124 *of the Penal Code Act.*

***Acellam Collins* Judge 20/7/23**

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